

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SHERMAN RAINES,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:05CV221 RWS
)	
JOHN E. POTTER,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Raines's pro se Complaint fails to state a cognizable claim for relief. Because Raines is appearing before the Court pro se, his complaint is entitled to a liberal construction. E.g., Smith v. Hundley, 190 F.3d 852, 855 (8th Cir. 1999). However, because Raines is before the Court in forma pauperis, the Court must dismiss the case if it is determined to be frivolous or malicious. 28 U.S.C. 1915(e).

Even construing the complaint liberally, I find no legally cognizable claims for relief. Furthermore, elements of the complaint indicate malice on Raines's part. For example, in one allegation he states that he tried to call the police to have them eject other employees from "his" work area at a United States Post Office. However, it is quite clear and obvious that Raines does not have any proprietary interest in any property owned by the United States Government. As a result, his attempt to have police remove other workers from any area of a United States Post Office indicates malice towards Defendant and Defendant's employees. Additionally, the facts surrounding this case indicate that Raines is engaging in malicious litigation. Not only has Raines filed numerous lawsuits in this Court against Defendant, but he has also filed lawsuits naming a United States District Judge, the Clerk of the Court, the United States Marshall's Office, and

various Assistant United States Attorneys as defendants. See Spencer v. Rhodes, 656 F. Supp. 458, 463 (E.D.N.C. 1987) (“malice” may be determined by “the circumstances and history that surround the filing”).

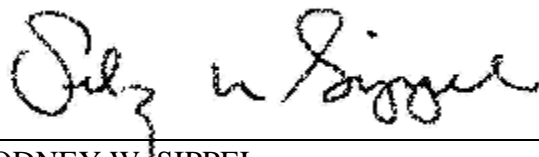
I will allow Raines to file an amended complaint in order to cure the deficiencies in the pleadings. When drafting the amended complaint, Raines shall comply with Federal Rule of Civil Procedure 8(a). Rule 8(a) requires that the pleadings contain “a short and plain statement of the claim showing that the pleader is entitled to relief . . .” Raines’s amended complaint should also show that he has an arguable claim for employment discrimination in both fact and law.

Raines must submit his amended complaint within thirty days. If Raines does not file an amended complaint within thirty days, the Court may dismiss this case with prejudice.

Accordingly,

IT IS HEREBY ORDERED that Raines file an amended complaint within thirty (30) days of the date of this Order.

Dated this 14th Day of July, 2005.

A handwritten signature in black ink, appearing to read "Rodney W. Sippe", written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE